

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

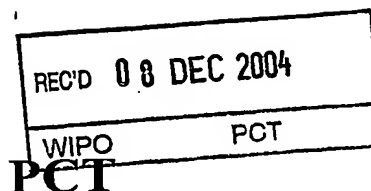
Applicant's or agent's file reference 12529290/EJH	FOR FURTHER ACTION	See item 4 below
International application No. PCT/AU2004/001493	International filing date (<i>day/month/year</i>) 28 October 2004 (28.10.2004)	Priority date (<i>day/month/year</i>) 29 October 2003 (29.10.2003)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant THE CORPORATION OF THE TRUSTEES OF THE ORDER OF THE SISTERS OF MERCY IN QUEENSLAND		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).																								
2.	<p>This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.</p>																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 60%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application
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4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 01 May 2006 (01.05.2006)
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PATENT COOPERATION TREATY

From the:
INTERNATIONAL SEARCHING AUTHORITY



To:

Davies Collison Cave
Level 15
1 Nicholson Street
MELBOURNE VIC 3000

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing 26 NOV 2004
(day/month/year)

Applicant's or agent's file reference
12529290/EJH/ar

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/AU2004/001493

International filing date (day/month/year)
28 October 2004

Priority date (day/month/year)
29 October 2003

International Patent Classification (IPC) or both national classification and IPC
Int. Cl. 7 C12N 5/08

Applicant
**THE CORPORATION OF THE TRUSTEES OF THE ORDER OF THE SISTERS OF MERCY IN
QUEENSLAND et al**

1. This opinion contains indications relating to the following items:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Box No. I | Basis of the opinion |
| <input type="checkbox"/> Box No. II | Priority |
| <input checked="" type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> Box No. VIII | Certain observations on the international application |

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the IPEA/AU
AUSTRALIAN PATENT OFFICE
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Authorized Officer
PHILIPPA WYRDEMAN
Telephone No. (02) 6283 2554

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/AU2004/001493

Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/AU2004/001493

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos: 1-37 in part

because:

☐ the said international application, or the said claim Nos.

relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos.
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos.

are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claims Nos. 1-37 in part

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form ☐ has not been furnished

☐ does not comply with the standard

the computer readable form ☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/AU2004/001493

Box No. V **Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims 1-37 in part	YES
	Claims	NO
Inventive step (IS)	Claims 1-37 in part	YES
	Claims	NO
Industrial applicability (IA)	Claims 1-37	YES
	Claims	NO

2. Citations and explanations:

All the documents cited in the ISR were category A only. Therefore the claimed invention is not disclosed in any of these patent documents and hence all the claims are novel and involve an inventive step.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/AU2004/001493

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claims 1-37 are not fully supported by this application. Claims 1-37 are directed to isolated populations of CD4+ cells with CMRF-35 and CD45RO surface molecule status. Said status may be negative for either or both of these surface molecules. The description provides that the invention is based upon the determination that the CMRF-35 mAb defines a sub-population of T-cells and identifies five sub-populations defined thereby (see pages 3 and 4). These claims are directed to these sub-populations but without the feature that they be defined via the use of the CMRF-35 mAb. The scope of these claims is thus such that they could include any CD4+ cells with neither or only one of these molecular markers that do not form part of the sub-population as defined by CMRF-35 mAb. The description fails to provide support for such CD4+ cells.